

# House File 2556 - Introduced

HOUSE FILE \_\_\_\_\_  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 634)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the regulatory duties of the banking division  
2 of the department of commerce regarding banking, debt  
3 management, delayed deposit services, mortgage banking, and  
4 industrial loan companies, and providing penalties.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
6 TLSB 5291HV 82  
7 rn/nh/5

PAG LIN

1 1 Section 1. Section 524.107, subsection 2, Code 2007, is  
1 2 amended to read as follows:  
1 3 2. A person doing business in this state shall not use the  
1 4 words "bank" or "trust" or use any derivative, plural, or  
1 5 compound of the words "bank", "banking", "bankers", or "trust"  
1 6 in any manner which would tend to create the impression that  
1 7 the person is authorized to engage in the business of banking  
1 8 or to act in a fiduciary capacity, except a state bank  
1 9 authorized to do so by this chapter, a national bank to the  
1 10 extent permitted by the laws of the United States, a bank  
1 11 holding company as defined in section 524.1801, a savings and  
1 12 loan holding company as defined in 12 U.S.C. } 1467a, a state  
1 13 association pursuant to section 534.507, or a federal  
1 14 association to the extent permitted by the laws of the United  
1 15 States, or, insofar as the word "trust" is concerned, an  
1 16 individual permissibly serving as a fiduciary in this state,  
1 17 pursuant to section 633.63, or, insofar as the words "trust"  
1 18 and "bank" are concerned, a nonresident corporate fiduciary  
1 19 permissibly serving as a fiduciary in this state pursuant to  
1 20 section 633.64.

1 21 Sec. 2. Section 524.203, Code 2007, is amended by striking  
1 22 the section and inserting in lieu thereof the following:

1 23 524.203 SUPERINTENDENT == VACANCY.

1 24 If the office of the superintendent of banking is vacant,  
1 25 the chief of the bank bureau of the banking division shall be  
1 26 the acting superintendent until the governor appoints a new  
1 27 superintendent or acting superintendent. If the chief of the  
1 28 bank bureau is unable to serve, the chief of the finance  
1 29 bureau of the banking division shall be the acting  
1 30 superintendent until the governor appoints a new  
1 31 superintendent or acting superintendent. If both the chief of  
1 32 the bank bureau and the chief of the finance bureau are unable  
1 33 to serve, the chief of the professional licensing and  
1 34 regulation bureau of the banking division shall be the acting  
1 35 superintendent until the governor appoints a new  
2 1 superintendent or acting superintendent.

2 2 Sec. 3. Section 524.211, subsection 1, Code Supplement  
2 3 2007, is amended to read as follows:

2 4 1. The superintendent, general counsel, examiners, and  
2 5 other employees assigned to the bank bureau of the banking  
2 6 division are prohibited from obtaining a loan of money or  
2 7 property from a state-chartered bank, a state savings and loan  
2 8 association, or any person or entity affiliated with a  
2 9 state-chartered bank or a state savings and loan association,  
2 10 unless they do not personally participate in the examination,  
2 11 oversight, or official review concerning the regulation of the  
2 12 bank or savings and loan association.

2 13 Sec. 4. Section 524.212, Code Supplement 2007, is amended  
2 14 to read as follows:

2 15 524.212 PROHIBITION AGAINST DISCLOSURE OF REGULATORY  
2 16 INFORMATION.

2 17 1. The superintendent, members of the state banking  
2 18 council, general counsel, examiners, or other employees of the  
2 19 banking division shall not disclose, in any manner, to any  
2 20 person other than the person examined and those regulatory  
2 21 agencies referred to in section 524.217, subsection 2, any  
2 22 information relating specifically to the supervision and  
2 23 regulation of any state bank, persons subject to the  
2 24 provisions of chapter 533A, 533C, 536, or 536A, any affiliate  
2 25 of any state bank, or an affiliate of a person subject to the  
2 26 provisions of chapter 533A, 533C, 536, or 536A, except when  
2 27 ordered to do so by a court of competent jurisdiction and then  
2 28 only in those instances referred to in section 524.215,  
2 29 subsection 2, paragraphs "a", "b", "c", and "e".

2 30 2. ~~The superintendent may receive documents, materials, or~~  
2 31 ~~other information, including otherwise confidential and~~  
2 32 ~~privileged documents, materials, or other information, from~~  
2 33 ~~other local, state, federal, and international regulatory~~  
2 34 ~~agencies, the conference of state bank supervisors and its~~  
2 35 ~~affiliates or subsidiaries, the American association of~~  
3 1 ~~mortgage regulators and its affiliates or subsidiaries, and~~  
3 2 ~~the national association of consumer credit administrators and~~  
3 3 ~~its affiliates or subsidiaries, and shall maintain as~~  
3 4 ~~confidential and privileged any such document, material, or~~  
3 5 ~~other information received with notice or the understanding~~  
3 6 ~~that it is confidential or privileged under the laws of the~~  
3 7 ~~jurisdiction that is the source of the document, material, or~~  
3 8 ~~other information.~~

3 9 Sec. 5. Section 524.216, subsection 2, paragraph c, Code  
3 10 Supplement 2007, is amended to read as follows:

3 11 c. A statement of the receipts and disbursements of funds  
3 12 of the superintendent during the ~~calendar~~ fiscal year ending  
3 13 on the preceding ~~December 31~~ June 30 and of the funds on hand  
3 14 on such ~~December 31~~ June 30.

3 15 Sec. 6. NEW SECTION. 524.229 EMERGENCY POWERS OF  
3 16 SUPERINTENDENT.

3 17 Whenever the superintendent determines that an emergency  
3 18 affecting one or more state-chartered banks or bank offices  
3 19 exists, or is impending, in this state or in any part or parts  
3 20 of this state, the superintendent may temporarily suspend  
3 21 applicable rules or statutes to the extent necessary to allow  
3 22 the affected bank or banks to respond to the emergency.

3 23 Sec. 7. Section 524.312, subsection 2, Code 2007, is  
3 24 amended to read as follows:

3 25 2. A state bank may, with the prior written approval of  
3 26 the superintendent, change the location of its principal place  
3 27 of business to a new location within the state. ~~A change of~~  
3 28 ~~location shall be limited to another location in the same~~  
3 29 ~~municipal corporation, to a location in a municipal~~  
3 30 ~~corporation in the same county, or to a location in a~~  
3 31 ~~municipal corporation in a county that is contiguous to or~~  
3 32 ~~touching or cornering on the county in which the state bank is~~  
3 33 ~~located. If a state bank has its principal place of business~~  
3 34 ~~in an unincorporated area, the superintendent may authorize a~~  
3 35 ~~change of location of its principal place of business to a new~~  
4 1 ~~location within the same unincorporated area as well as to any~~  
4 2 ~~location referred to in this subsection.~~

4 3 Sec. 8. Section 524.1607, Code 2007, is amended to read as  
4 4 follows:

4 5 524.1607 FALSE STATEMENT FOR CREDIT.

4 6 1. For the purposes of this section, unless the context  
4 7 otherwise requires:

4 8 a. "Financial institution" means a financial institution  
4 9 as defined in 18 U.S.C. } 20.

4 10 b. "Mortgage banker" means a person who makes or  
4 11 originates mortgage loans on real property located in this  
4 12 state.

4 13 c. "Mortgage broker" means a person who arranges or  
4 14 negotiates, or attempts to arrange or negotiate, mortgage  
4 15 loans on real property located in this state.

4 16 2. Any person who knowingly makes or causes to be made,  
4 17 directly or indirectly, any false statement in writing, or who  
4 18 procures, knowing that a false statement in writing has been  
4 19 made concerning the financial condition or means or ability to  
4 20 pay of such person, or any other person in which such person  
4 21 is interested or for whom such person is acting, with the  
4 22 intent that such statement shall be relied upon by a ~~bank~~  
4 23 financial institution, a mortgage banker, a mortgage broker,  
4 24 or any other entity licensed by the banking division for the  
4 25 purpose of procuring the delivery of property, the payment of  
4 26 cash or the receipt of credit in any form, for the benefit of  
4 27 such person or of any other person in which such person is

4 28 interested or for whom such person is acting, shall be guilty  
4 29 of a fraudulent practice.

4 30 Sec. 9. Section 533A.2, subsections 1 and 2, Code

4 31 Supplement 2007, are amended to read as follows:

4 32 1. A person shall not engage in the business of debt  
4 33 management in this state without a license as provided for in  
4 34 this chapter unless exempt under subsection 2. A person  
4 35 engages in the business of debt management in this state if  
5 1 the person solicits, on behalf of the person or another  
5 2 person, to provide, or enters into a contract with one or more  
5 3 debtors to provide debt management to a debtor who resides in  
5 4 this state.

5 5 2. The following persons, including employees of such  
5 6 persons, shall not be required to be licensed ~~when engaged in~~  
5 7 ~~the regular course of their respective businesses and~~  
5 8 ~~professions or to otherwise comply with the provisions of this~~  
5 9 ~~chapter:~~

5 10 a. ~~Attorneys at law~~ A licensed attorney admitted to  
5 11 practice in this state acting solely as an incident to the  
5 12 practice of law.

5 13 b. Banks, savings and loan associations, credit unions,  
5 14 mortgage bankers and mortgage brokers licensed or registered  
5 15 under chapter 535B, insurance companies and similar  
5 16 fiduciaries, regulated loan companies licensed under chapter  
5 17 536, and industrial loan companies licensed under chapter  
5 18 536A, authorized and admitted to transact business in this  
5 19 state and performing credit and financial adjusting in the  
5 20 regular course of their principal business, or while  
5 21 performing an escrow function.

5 22 c. Abstract companies, while performing an escrow  
5 23 function.

5 24 d. Employees of licensees under this chapter, while  
5 25 performing services for the employee's licensed employer.

5 26 e. Judicial officers or others acting under court orders.

5 27 f. Nonprofit religious, fraternal, or cooperative  
5 28 organizations offering to debtors gratuitous debt=management  
5 29 service.

5 30 g. Those persons whose principal business is the  
5 31 origination of first mortgage loans on real estate for their  
5 32 own portfolios or for sale to institutional investors.

5 33 Sec. 10. Section 533A.7, Code 2007, is amended by striking  
5 34 the section and inserting in lieu thereof the following:

5 35 533A.7 DISCIPLINARY ACTION.

6 1 1. The superintendent may, after notice and hearing  
6 2 pursuant to chapter 17A, take disciplinary action against a  
6 3 licensee if the superintendent finds any of the following:

6 4 a. The licensee, or an owner, partner, member,  
6 5 shareholder, officer, director, or manager of the licensee,  
6 6 has been convicted of a felony or of an indictable misdemeanor  
6 7 for financial gain.

6 8 b. The licensee, or an owner, partner, member,  
6 9 shareholder, officer, director, or manager of the licensee,  
6 10 has violated any of the provisions of this chapter or any  
6 11 other state or federal law, rule, or regulation applicable to  
6 12 the conduct of its business.

6 13 c. The licensee, or an owner, partner, member,  
6 14 shareholder, officer, director, or manager of the licensee,  
6 15 has engaged in fraud or deceit in procuring the issuance of a  
6 16 license or renewal under this chapter.

6 17 d. The licensee, or an owner, partner, member,  
6 18 shareholder, officer, director, or manager of the licensee,  
6 19 has engaged in unfair conduct.

6 20 e. The licensee is insolvent, or has filed for bankruptcy,  
6 21 receivership, or assignment for the benefit of creditors.

6 22 f. The licensee fails to post the bond required by the  
6 23 provisions of this chapter or the superintendent receives  
6 24 notice that the required bond has been canceled.

6 25 2. The superintendent may impose one or more of the  
6 26 following disciplinary actions against a licensee:

6 27 a. Revoke a license.

6 28 b. Suspend a license until further order of the  
6 29 superintendent for a specified period of time.

6 30 c. Impose a period of probation under specified  
6 31 conditions.

6 32 d. Impose civil penalties in an amount not to exceed five  
6 33 thousand dollars for each violation.

6 34 e. Issue a citation and warning respecting licensee  
6 35 behavior.

7 1 f. Order the licensee to pay restitution.

7 2 3. The superintendent may order an emergency suspension of  
7 3 a licensee's license pursuant to section 17A.18A. A written

7 4 order containing the facts or conduct which warrants the  
7 5 emergency action shall be timely sent to the licensee by  
7 6 restricted certified mail. Upon issuance of the suspension  
7 7 order, the licensee must also be notified of the right to an  
7 8 evidentiary hearing. A suspension proceeding shall be  
7 9 promptly instituted and determined.

7 10 4. Except as provided in this section, a license shall not  
7 11 be revoked or suspended except after notice and a hearing  
7 12 thereon in accordance with chapter 17A.

7 13 5. A licensee may surrender a license by delivering to the  
7 14 superintendent written notice of surrender, but a surrender  
7 15 does not affect the licensee's civil or criminal liability for  
7 16 acts committed before the surrender.

7 17 6. A revocation, suspension, or surrender of a license  
7 18 does not impair or affect the obligation of a preexisting  
7 19 lawful contract between the licensee and any person, including  
7 20 a debtor.

7 21 Sec. 11. NEW SECTION. 533A.17 VIOLATIONS == INJUNCTIONS  
7 22 == CIVIL PENALTIES.

7 23 1. If the superintendent believes that a person has  
7 24 engaged in, or is about to engage in, an act or practice that  
7 25 constitutes or will constitute a violation of this chapter,  
7 26 the superintendent may apply to the district court for an  
7 27 order enjoining such act or practice. Upon a showing by the  
7 28 superintendent that such person has engaged, or is about to  
7 29 engage, in any such act or practice, the district court shall  
7 30 grant an injunction.

7 31 2. The superintendent may investigate or initiate  
7 32 complaints against persons who are not licensed under this  
7 33 chapter to determine whether the person is violating this  
7 34 chapter.

7 35 3. In addition to or as an alternative to applying to the  
8 1 district court for an injunction, the superintendent may issue  
8 2 an order to a person who is not licensed under this chapter to  
8 3 require compliance with this chapter, may impose a civil  
8 4 penalty against such person for any violation of this chapter  
8 5 in an amount up to five thousand dollars for each violation,  
8 6 and may order the person to pay restitution.

8 7 4. Before issuing an order under this section, the  
8 8 superintendent shall provide the person written notice and the  
8 9 opportunity to request a hearing. The hearing must be  
8 10 requested within thirty days after receipt of the notice and  
8 11 shall be conducted in the same manner as provided for in  
8 12 disciplinary proceedings involving a licensee under this  
8 13 chapter.

8 14 5. A person aggrieved by the imposition of a civil penalty  
8 15 under this section may seek judicial review pursuant to  
8 16 section 17A.19.

8 17 6. An action to enforce an order under this section may be  
8 18 joined with an action for an injunction.

8 19 Sec. 12. Section 533D.3, subsection 1, Code 2007, is  
8 20 amended to read as follows:

8 21 1. A person shall not operate a delayed deposit services  
8 22 business in this state unless the person is physically located  
8 23 in this state and licensed by the superintendent as provided  
8 24 in this chapter.

8 25 Sec. 13. Section 533D.12, Code 2007, is amended by  
8 26 striking the section and inserting in lieu thereof the  
8 27 following:

8 28 533D.12 DISCIPLINARY ACTION.

8 29 1. The superintendent may, after notice and hearing  
8 30 pursuant to chapter 17A, take disciplinary action against a  
8 31 licensee if the superintendent finds any of the following:

8 32 a. The licensee or any of its officers, directors,  
8 33 shareholders, partners, or members has violated this chapter,  
8 34 any rule adopted by the superintendent, or any other state or  
8 35 federal law applicable to the conduct of its business.

9 1 b. The licensee has failed to pay a license fee required  
9 2 under this chapter or to maintain in effect the bond or bonds  
9 3 required under this chapter.

9 4 c. A fact or condition existing which, if it had existed  
9 5 at the time of the original application for the license, would  
9 6 have resulted in the denial of issuance of a license.

9 7 d. The licensee has abandoned its place of business for a  
9 8 period of sixty days or more.

9 9 e. The licensee fails to pay an administrative penalty or  
9 10 the cost of investigation as ordered by the superintendent.

9 11 f. The licensee has violated an order of the  
9 12 superintendent.

9 13 2. The superintendent may impose one or more of the  
9 14 following disciplinary actions against a licensee:

9 15 a. Revoke a license.  
9 16 b. Suspend a license until further order of the  
9 17 superintendent or for a specified period of time.  
9 18 c. Impose a period of probation under specified  
9 19 conditions.  
9 20 d. Impose civil penalties in an amount not to exceed five  
9 21 thousand dollars for each violation.  
9 22 e. Issue a citation and warning respecting licensee  
9 23 behavior.  
9 24 f. Order the licensee to pay restitution.

9 25 3. The superintendent may order an emergency suspension of  
9 26 a licensee's license pursuant to section 17A.18A. A written  
9 27 order containing the facts or conduct which warrants the  
9 28 emergency action shall be timely sent to the licensee by  
9 29 restricted certified mail. Upon issuance of the suspension  
9 30 order, the licensee must also be notified of the right to an  
9 31 evidentiary hearing. A suspension proceeding shall be  
9 32 promptly instituted and determined.  
9 33 4. Except as provided in this section, a license shall not  
9 34 be revoked or suspended except after notice and a hearing  
9 35 thereon in accordance with chapter 17A.

10 1 5. A licensee may surrender a license by delivering to the  
10 2 superintendent written notice of surrender, but a surrender  
10 3 does not affect the licensee's civil or criminal liability for  
10 4 acts committed before the surrender.

10 5 6. A revocation, suspension, or surrender of a license  
10 6 does not impair or affect the obligation of a preexisting  
10 7 lawful contract between the licensee and any person, including  
10 8 a debtor.

10 9 Sec. 14. Section 535.8, subsection 1, Code 2007, is  
10 10 amended by striking the subsection and inserting in lieu  
10 11 thereof the following:

10 12 1. DEFINITIONS. For purposes of this section, unless the  
10 13 context otherwise requires:

10 14 a. "Lender" means a person who makes or originates a loan;  
10 15 a person who is identified as a lender on the loan documents;  
10 16 a person who arranges, negotiates, or brokers a loan; and a  
10 17 person who provides any goods or services as an incident to or  
10 18 as a condition required for the making or closing of the loan.

10 19 b. "Loan" means a loan of money which is wholly or in part  
10 20 to be used for the purpose of purchasing real property which  
10 21 is a single-family or a two-family dwelling occupied or to be  
10 22 occupied by the borrower. A loan includes the refinancing of  
10 23 a contract or sale, and the refinancing of a prior loan,  
10 24 whether or not the borrower also was the borrower under the  
10 25 prior loan, and the assumption of a prior loan.

10 26 Sec. 15. Section 535B.2, Code 2007, is amended to read as  
10 27 follows:

10 28 535B.2 EXEMPTIONS.

10 29 This chapter, except for sections 535B.3, 535B.11, 535B.12,  
10 30 and 535B.13, does not apply to any of the following:

10 31 1. A bank, bank holding company, savings bank, savings and  
10 32 loan association, or credit union organized under the laws of  
10 33 this state, another state, or the United States, or a  
10 34 subsidiary or affiliate of owned or controlled by such a bank,  
10 35 bank holding company, savings bank, savings and loan  
11 1 association, or credit union.

11 2 2. A loan company licensed under chapter 536 or 536A.

11 3 3. An insurance company or a subsidiary or affiliate of an  
11 4 insurance company organized under the laws of this state,  
11 5 another state, or the United States, and subject to regulation  
11 6 by the commissioner of insurance.

11 7 4. Mortgage lenders or mortgage bankers maintaining an  
11 8 office in this state whose principal business in this state is  
11 9 conducted with or through mortgage lenders or mortgage bankers  
11 10 otherwise exempt under this section and which maintain a place  
11 11 of business in this state.

11 12 ~~5. An insurance producer licensed under chapter 522B.~~

11 13 ~~6. 5. An individual who is employed by a person otherwise~~  
11 14 ~~exempt under this section, or who is under an exclusive~~  
11 15 ~~contract with, by contract, operates exclusively on behalf of~~

11 16 a person otherwise exempt under this section to the extent  
11 17 that the individual is acting within the scope of the  
11 18 individual's employment or exclusive contract with the exempt  
11 19 person and is acting within the scope of the exempt person's  
11 20 charter, license, authority, approval, or certificate.

11 21 ~~7. 6. A real estate broker licensed under chapter 543B~~  
11 22 ~~while engaged in practice as a real estate broker.~~

11 23 ~~8. 7. A nonprofit organization qualifying for tax-exempt~~  
11 24 ~~status under the Internal Revenue Code as defined in section~~  
11 25 ~~422.3 which offers housing services to low and moderate income~~

11 26 families.

11 27 Sec. 16. Section 535B.3, subsections 1 and 3, Code 2007,  
11 28 are amended to read as follows:

11 29 1. A person exempt under section 535B.2, subsection 4 or ~~8~~  
11 30 7, shall register with the administrator.

11 31 3. The registrant, except a nonprofit organization exempt  
11 32 under section 535B.2, subsection ~~8~~ 7, shall pay an annual  
11 33 registration fee of one hundred dollars.

11 34 Sec. 17. Section 535B.4, subsections 6 and 7, Code  
11 35 Supplement 2007, are amended to read as follows:

12 1 6. Licenses granted under this chapter expire on the next  
12 2 ~~June 30~~ December 31 after their issuance.

12 3 7. Applications for renewals of licenses and individual  
12 4 registrations under this chapter must be filed with the  
12 5 administrator before ~~June 1~~ December 1 of the year of  
12 6 expiration on forms prescribed by the administrator. A  
12 7 renewal application must be accompanied by a fee of two  
12 8 hundred dollars for a license to transact business solely as a  
12 9 mortgage broker, and four hundred dollars for a license to  
12 10 transact business as a mortgage banker. The fee to renew an  
12 11 individual registration shall be the fee determined pursuant  
12 12 to section 535B.4A. The administrator may assess a late fee  
12 13 of ten dollars per day for applications or registrations  
12 14 accepted for processing after ~~June~~ December 1.

12 15 Sec. 18. Section 535B.4, Code Supplement 2007, is amended  
12 16 by adding the following new subsection:

12 17 NEW SUBSECTION. 9. In addition to the application and  
12 18 renewal fees provided for in subsections 4 and 7, the  
12 19 administrator may assess application and renewal fees for each  
12 20 branch location of the licensee, sponsor fees, and change of  
12 21 sponsor fees.

12 22 Sec. 19. Section 535B.4A, Code 2007, is amended to read as  
12 23 follows:

12 24 535B.4A INDIVIDUAL REGISTRATION REQUIREMENTS == FEES.

12 25 1. A natural person who is a mortgage banker or mortgage  
12 26 broker and who is employed by, under contract with, or is an  
12 27 agent of a licensee under section 535B.4 shall apply for an  
12 28 individual registration with the administrator and shall  
12 29 register annually with the administrator. The administrator  
12 30 shall collect registration fees necessary to cover the costs  
12 31 associated with the annual registrations ~~made pursuant to this~~  
12 32 ~~section, including but not limited to sponsor fees and change~~  
12 33 ~~of sponsor fees.~~

12 34 2. Beginning January 1, 2009, each applicant for an  
12 35 individual registration must meet the education and training  
13 1 requirements adopted by the administrator by rule. The  
13 2 education and training requirements may include a post-high  
13 3 school education requirement or a requirement that the  
13 4 applicant have successfully completed accredited courses  
13 5 covering specified subject matters. The administrator may  
13 6 incorporate any education and training criteria recommended by  
13 7 federal law, or by other financial regulators, self-regulatory  
13 8 organizations, or financial industry organizations.

13 9 3. Beginning January 1, 2009, each applicant for an  
13 10 individual registration must have passed an examination  
13 11 prescribed by the administrator within two years immediately  
13 12 prior to making the application to the administrator. An  
13 13 applicant who fails the examination once shall be allowed to  
13 14 take the examination up to two additional times, provided at  
13 15 least one month has elapsed since the applicant last took the  
13 16 examination. An applicant shall pay any fees associated with  
13 17 the examination.

13 18 ~~2-~~ 4. An individual registrant who ~~registers~~ applies for  
13 19 an individual registration pursuant to this section ~~for the~~  
13 20 ~~first time~~ shall submit to a national criminal history check  
13 21 through the federal bureau of investigation prior to being  
13 22 registered. The administrator may submit the registrant's  
13 23 fingerprints to the federal bureau of investigation by the  
13 24 department of public safety through the state criminal history  
13 25 repository for the purpose of a national criminal history  
13 26 check. The results of a criminal history check conducted  
13 27 pursuant to this subsection shall not be considered a public  
13 28 record under chapter 22. The administrator shall collect fees  
13 29 necessary to cover the costs associated with criminal history  
13 30 checks conducted pursuant to this section.

13 31 ~~3-~~ 5. A person shall not be eligible for licensing  
13 32 pursuant to section 535B.4 unless all individual registrants  
13 33 employed by, under contract with, or who are agents of the  
13 34 person have successfully completed the registration and  
13 35 criminal background check required by this section.

14 1 ~~4-~~ 6. The registration of an individual registrant

14 2 pursuant to this section is not assignable.  
14 3 ~~5- 7.~~ The registration of an individual registrant  
14 4 pursuant to this section expires on ~~June 30~~ December 31  
14 5 following the date of registration.  
14 6 ~~6- 8.~~ An individual registrant who fails to comply with  
14 7 the requirements of section 535B.9A shall not be ~~registered~~  
14 8 renewed or the registration of the individual registrant may  
14 9 be suspended or revoked by the administrator.  
14 10 Sec. 20. Section 535B.7, subsection 2, Code 2007, is  
14 11 amended by adding the following new paragraph:  
14 12 NEW PARAGRAPH. f. Order the licensee or individual  
14 13 registrant to pay restitution.  
14 14 Sec. 21. Section 535B.8, Code 2007, is amended to read as  
14 15 follows:  
14 16 535B.8 OPERATING WITHOUT A LICENSE OR REGISTRATION.  
14 17 A person, who without first obtaining a license or  
14 18 individual registration under this chapter, engages in the  
14 19 business or occupation of, or advertises or holds the person  
14 20 out as, or claims to be, or temporarily acts as, a mortgage  
14 21 banker or mortgage broker in this state is guilty of a class  
14 22 "D" felony and may be prosecuted by the attorney general or a  
14 23 county attorney.  
14 24 Sec. 22. Section 535B.9, subsection 1, Code 2007, is  
14 25 amended to read as follows:  
14 26 1. An applicant for a license shall file with the  
14 27 administrator a bond furnished by a surety company authorized  
14 28 to do business in this state, together with evidence of  
14 29 whether the applicant is seeking to transact business as a  
14 30 mortgage broker or as a mortgage banker. The bond shall be in  
14 31 the amount of ~~fifty thousand dollars~~ one hundred thousand  
14 32 dollars. The bond shall be continuous in nature until  
14 33 canceled by the surety with not less than thirty days' notice  
14 34 in writing to the mortgage broker or mortgage banker and to  
14 35 the administrator indicating the surety's intention to cancel  
15 1 the bond on a specific date. The bond shall be for the use of  
15 2 the state and any persons who may have causes of action  
15 3 against the applicant. The bond shall be conditioned upon the  
15 4 applicant's faithfully conforming to and abiding by this  
15 5 chapter and any rules adopted under this chapter and shall  
15 6 require that the surety pay to the state and to any persons  
15 7 all moneys that become due or owing to the state and to the  
15 8 persons from the applicant by virtue of this chapter.  
15 9 Sec. 23. Section 535B.10, subsection 2, Code 2007, is  
15 10 amended to read as follows:  
15 11 2. For the purposes of discovering violations of this  
15 12 chapter or any related rules or for securing information  
15 13 lawfully required under this chapter, the administrator may at  
15 14 any time and as often as the administrator deems necessary,  
15 15 but in no event less frequently than once during each two-year  
15 16 period, investigate the business and examine the books,  
15 17 accounts, records, and files used by a licensee or individual  
15 18 registrant.  
15 19 Sec. 24. Section 535B.10, subsection 6, paragraph b, Code  
15 20 2007, is amended to read as follows:  
15 21 b. The administrator may furnish information relating to  
15 22 the supervision of licensees and registrants to the federal  
15 23 agencies or federally related entities listed in subsection 3,  
15 24 the federal deposit insurance corporation, the federal reserve  
15 25 system, the office of the comptroller of the currency, the  
15 26 office of thrift supervision, the national credit union  
15 27 administration, the federal home loan bank, ~~and a financial~~  
15 28 ~~institution regulatory authorities authority~~ of any other  
15 29 states state, a professional licensing authority of this state  
15 30 or any other state, or a law enforcement agency, or to any  
15 31 official or supervising examiner of such regulatory  
15 32 authorities.  
15 33 Sec. 25. Section 536.3, Code 2007, is amended to read as  
15 34 follows:  
15 35 536.3 BOND.  
16 1 The applicant shall also at the same time file with the  
16 2 superintendent a bond to be approved by the superintendent in  
16 3 which the applicant shall be the obligor, with one or more  
16 4 sureties, in the sum of ~~one twenty-five~~ thousand dollars. The  
16 5 said bond shall run to the state for the use of the state and  
16 6 of any person or persons who may have a cause of action  
16 7 against the obligor of said bond under the provisions of this  
16 8 chapter. Such bond shall be conditioned that said obligor  
16 9 will faithfully conform to and abide by the provisions of this  
16 10 chapter and of all rules and regulations lawfully made by the  
16 11 superintendent hereunder, and will pay to the state and to any  
16 12 such person or persons any and all moneys that may become due

16 13 or owing to the state or to such person or persons from said  
16 14 obligor under and by virtue of the provisions of this chapter.  
16 15 Sec. 26. Section 536.6, unnumbered paragraph 1, Code 2007,  
16 16 is amended to read as follows:

16 17 If the superintendent shall find at any time that the bond  
16 18 is insecure or exhausted or otherwise of doubtful validity or  
16 19 collectibility, an additional bond to be approved by the  
16 20 superintendent, with one or more sureties and of the character  
16 21 specified in section 536.3, in the sum of not more than ~~one~~  
16 22 twenty-five thousand dollars, shall be filed by the licensee  
16 23 within ten days after written demand upon the licensee by the  
16 24 superintendent.

16 25 Sec. 27. Section 536.9, Code 2007, is amended by striking  
16 26 the section and inserting in lieu thereof the following:

16 27 536.9 DISCIPLINARY ACTION.

16 28 1. The superintendent may, after notice and hearing  
16 29 pursuant to chapter 17A, take disciplinary action against a  
16 30 licensee if the superintendent finds any of the following:

16 31 a. The licensee has violated a provision of this chapter  
16 32 or a rule adopted under this chapter or any other state or  
16 33 federal law, rule, or regulation applicable to the conduct of  
16 34 its business.

16 35 b. A fact or condition exists which would have warranted  
17 1 the superintendent to refuse to originally issue the license.

17 2 c. The licensee has failed to pay the annual license fee  
17 3 or to maintain in effect the bond or bonds required under the  
17 4 provisions of this chapter.

17 5 d. The licensee is insolvent.

17 6 e. The licensee has violated an order of the  
17 7 superintendent.

17 8 2. The superintendent may impose one or more of the  
17 9 following disciplinary actions against a licensee:

17 10 a. Revoke a license.

17 11 b. Suspend a license until further order of the  
17 12 superintendent or for a specified period of time.

17 13 c. Impose a period of probation under specified  
17 14 conditions.

17 15 d. Impose civil penalties in an amount not to exceed five  
17 16 thousand dollars for each violation.

17 17 e. Issue a citation and warning respecting licensee  
17 18 behavior.

17 19 f. Order the licensee to pay restitution.

17 20 3. The superintendent may order an emergency suspension of  
17 21 a licensee's license pursuant to section 17A.18A. A written  
17 22 order containing the facts or conduct which warrants the  
17 23 emergency action shall be timely sent to the licensee by  
17 24 restricted certified mail. Upon issuance of the suspension  
17 25 order, the licensee must also be notified of the right to an  
17 26 evidentiary hearing. A suspension proceeding shall be  
17 27 promptly instituted and determined.

17 28 4. Except as provided in this section, a license shall not  
17 29 be revoked or suspended except after notice and a hearing  
17 30 thereon in accordance with chapter 17A.

17 31 5. A licensee may surrender a license by delivering to the  
17 32 superintendent written notice of surrender, but a surrender  
17 33 does not affect the licensee's civil or criminal liability for  
17 34 acts committed before the surrender.

17 35 6. A revocation, suspension, or surrender of a license  
18 1 does not impair or affect the obligation of a preexisting  
18 2 lawful contract between the licensee and any person, including  
18 3 a borrower.

18 4 Sec. 28. Section 536.11, unnumbered paragraph 2, Code  
18 5 2007, is amended to read as follows:

18 6 Each licensee shall annually on or before the fifteenth day  
18 7 of ~~March~~ April file a report with the superintendent giving  
18 8 such relevant information as the superintendent reasonably may  
18 9 require concerning the business and operations during the  
18 10 preceding calendar year of the licensed places of business  
18 11 conducted by such licensee within the state. Such report  
18 12 shall be made under oath and shall be in the form prescribed  
18 13 by the superintendent who shall make and publish annually an  
18 14 analysis and recapitulation of such reports.

18 15 Sec. 29. Section 536.12, Code 2007, is amended to read as  
18 16 follows:

18 17 536.12 RESTRICTIONS ON PRACTICES.

18 18 1. No licensee shall conduct the business of making loans  
18 19 under the provisions of this chapter within any office, room,  
18 20 suite or place of business in which any other business is  
18 21 solicited or engaged in, or in association or conjunction  
18 22 therewith, except as may be authorized in writing by the  
18 23 superintendent upon the superintendent's finding that the

18 24 character of such other business is such that the granting of  
18 25 such authority would not facilitate evasions of this chapter  
18 26 or of the rules lawfully made by the superintendent hereunder.  
18 27 2. No licensee shall make any loan provided for by this  
18 28 chapter under any other name or at any other place of business  
18 29 than that named in the license.

18 30 3. No licensee shall take any instrument in which blanks  
18 31 are left to be filled in after execution.

18 32 4. No licensee shall agree to obtain or arrange a  
18 33 residential mortgage for a potential borrower from a third  
18 34 person, unless the licensee also has a mortgage broker license  
18 35 and complies with all of the provisions of chapter 535B.

19 1 Sec. 30. Section 536.16, unnumbered paragraph 1, Code  
19 2 2007, is amended to read as follows:

19 3 Notwithstanding other provisions of this chapter to the  
19 4 contrary, a person who neither has an office physically  
19 5 located in this state nor engages in face-to-face solicitation  
19 6 in this state, if authorized by another state to make loans in  
19 7 that state at a rate of finance charge in excess of the rate  
19 8 provided in chapter 535, shall not be subject to ~~the following~~  
19 9 ~~provisions of this chapter:~~ section 536.10 to the extent it  
19 10 requires the superintendent to make an examination of the  
19 11 affairs, place of business, and records of the person on a  
19 12 periodic basis.

19 13 Sec. 31. Section 536.16, subsections 1 through 4, Code  
19 14 2007, are amended by striking the subsections.

19 15 Sec. 32. NEW SECTION. 536A.7A BONDS.

19 16 1. An applicant for a license shall file with the  
19 17 superintendent a bond furnished by a surety company authorized  
19 18 to do business in this state. The bond shall be in the amount  
19 19 of twenty-five thousand dollars. The bond shall be continuous  
19 20 in nature until canceled by the surety with not less than  
19 21 thirty days notice in writing to the applicant and to the  
19 22 superintendent indicating the surety's intention to cancel the  
19 23 bond on a specific date. The bond shall be for the use of the  
19 24 state and any persons who may have causes of action against  
19 25 the applicant. The bond shall be conditioned upon the  
19 26 applicant's faithfully conforming to and abiding by this  
19 27 chapter and any rules adopted under this chapter and shall  
19 28 require that the surety pay to the state and to any persons  
19 29 all moneys that become due or owing to the state and to the  
19 30 persons from the applicant by virtue of this chapter.

19 31 2. In lieu of filing a bond, the applicant may pledge an  
19 32 alternative form of collateral acceptable to the  
19 33 superintendent, if the alternative collateral provides  
19 34 protection to the state and any aggrieved person that is  
19 35 equivalent to that provided by a bond.

20 1 Sec. 33. Section 536A.14, unnumbered paragraph 1, Code  
20 2 2007, is amended to read as follows:

20 3 Each licensee shall annually on or before the fifteenth day  
20 4 of ~~March~~ April file with the superintendent a report in  
20 5 writing showing the results of the operation of its industrial  
20 6 loan business for the previous calendar year, which reports  
20 7 shall contain:

20 8 Sec. 34. Section 536A.18, Code 2007, is amended by  
20 9 striking the section and inserting in lieu thereof the  
20 10 following:

20 11 536A.18 DISCIPLINARY ACTION.

20 12 1. The superintendent may, after notice and hearing  
20 13 pursuant to chapter 17A, take disciplinary action against a  
20 14 licensee if the superintendent finds any of the following:

20 15 a. That the licensee has failed to pay the annual license  
20 16 fee required by this chapter or to maintain in effect the bond  
20 17 or bonds required under this chapter.

20 18 b. That the licensee has violated any of the provisions of  
20 19 this chapter or a rule adopted under this chapter or any other  
20 20 state or federal law, rule, or regulation applicable to the  
20 21 conduct of its business.

20 22 c. That the licensee has refused to submit to the  
20 23 examination required by this chapter.

20 24 d. That the licensee has neglected or refused for a period  
20 25 of more than thirty days to pay a final judgment rendered  
20 26 against it in the courts of this state.

20 27 e. That the licensee has become insolvent.

20 28 f. A fact or condition exists which would have warranted  
20 29 the superintendent to refuse to originally issue the license.

20 30 g. The licensee has violated an order of the  
20 31 superintendent.

20 32 2. The superintendent may impose one or more of the  
20 33 following disciplinary actions against a licensee:

20 34 a. Revoke a license.

20 35 b. Suspend a license until further order of the  
21 1 superintendent or for a specified period of time.  
21 2 c. Impose a period of probation under specified  
21 3 conditions.  
21 4 d. Impose civil penalties in an amount not to exceed five  
21 5 thousand dollars for each violation.  
21 6 e. Issue a citation and warning respecting licensee  
21 7 behavior.  
21 8 f. Order the licensee to pay restitution.  
21 9 3. The superintendent may order an emergency suspension of  
21 10 a licensee's license pursuant to section 17A.18A. A written  
21 11 order containing the facts or conduct which warrants the  
21 12 emergency action shall be timely sent to the licensee by  
21 13 restricted certified mail. Upon issuance of the suspension  
21 14 order, the licensee must also be notified of the right to an  
21 15 evidentiary hearing. A suspension proceeding shall be  
21 16 promptly instituted and determined.  
21 17 4. Except as provided in this section, a license shall not  
21 18 be revoked or suspended except after notice and a hearing  
21 19 thereon in accordance with chapter 17A.  
21 20 5. A licensee may surrender a license by delivering to the  
21 21 superintendent written notice of surrender, but a surrender  
21 22 does not affect the licensee's civil or criminal liability for  
21 23 acts committed before the surrender.  
21 24 6. A suspension, revocation, relinquishment, or expiration  
21 25 of a license shall not invalidate, impair, or affect the  
21 26 legality of obligations of any preexisting contracts, or  
21 27 prevent the enforcement or collection thereof.  
21 28 7. Judicial review of the actions of the superintendent  
21 29 may be sought in accordance with the terms of the Iowa  
21 30 administrative procedure Act, chapter 17A.

21 31 Sec. 35. Section 536A.23, subsection 1, Code 2007, is  
21 32 amended by adding the following new paragraph:

21 33 NEW PARAGRAPH. e. Obtain or arrange a residential  
21 34 mortgage loan for a potential borrower from a third person,  
21 35 unless the industrial loan company also has a mortgage broker  
22 1 license and complies with all provisions of chapter 535B.

22 2 Sec. 36. Section 558.70, subsection 4, Code Supplement  
22 3 2007, is amended to read as follows:

22 4 4. This section applies to a contract seller who entered  
22 5 into four or more residential real estate contracts in the  
22 6 three hundred sixty-five days previous to the contract seller  
22 7 signing the contract disclosure statement. For purposes of  
22 8 this subsection, two or more entities sharing a common owner  
22 9 or manager are considered a single contract seller. This  
22 10 section does not apply to a person or organization listed in  
22 11 section 535B.2, subsections 1 through 7 6.

#### EXPLANATION

22 13 This bill makes a number of changes to Code provisions  
22 14 under the purview of the banking division of the department of  
22 15 commerce.

22 16 With regard to Code chapter 524, dealing with bank  
22 17 regulation, the bill adds bank holding companies and savings  
22 18 and loan holding companies to the list of entities authorized  
22 19 to use the word "bank" in the name or title of their business  
22 20 organization, designates successor acting superintendents in  
22 21 the event the office of the superintendent of banking is  
22 22 vacant, and allows the superintendent regulatory flexibility  
22 23 in the event of a determination of a disaster impacting a  
22 24 bank's operation. The bill restricts application of a  
22 25 prohibition against obtaining a loan or property from banks  
22 26 applicable to specified banking officials and employees, to  
22 27 banks or savings and loan associations the official or  
22 28 employee is personally involved in examining or reviewing, and  
22 29 provides that information received by the superintendent of  
22 30 banking regarded as confidential by other regulatory agencies  
22 31 and entities will maintain that confidential status when in  
22 32 the custody of the banking division. The bill also changes  
22 33 from a calendar to fiscal year basis information contained in  
22 34 the superintendent's annual report, eliminates outdated  
22 35 geographic restrictions on a bank's ability to change its  
23 1 principal place of business, and makes it a fraudulent  
23 2 practice to provide false information for credit to any type  
23 3 of financial institution, as defined in the bill, as well as  
23 4 mortgage bankers and mortgage brokers.

23 5 Regarding Code chapter 533A, dealing with debt management,  
23 6 the bill changes a reference to "attorneys at law" to refer to  
23 7 a licensed attorney admitted to practice in Iowa acting solely  
23 8 as an incident to the attorney's legal practice in a section  
23 9 relating to exemptions from the Code chapter, and adds to an  
23 10 exemption relating to employees of licensees that they are

23 11 exempt from licensing while performing services for their  
23 12 employer. Further, the bill provides an expanded array of  
23 13 disciplinary actions and uniform processes available to the  
23 14 superintendent in the event of specified licensee criminal and  
23 15 civil violations, unfair conduct, insolvency, failure to post  
23 16 required bond, or violations of an order of the  
23 17 superintendent, and specifies injunctive relief and civil  
23 18 penalties in an amount up to \$5,000 for violations of the Code  
23 19 chapter.

23 20 In connection with Code chapter 533D, relating to delayed  
23 21 deposit services, the bill provides that delayed deposit  
23 22 companies must be physically located in this state in order to  
23 23 operate a delayed deposit service in the state, and provides  
23 24 an expanded array of disciplinary actions and uniform  
23 25 processes available in the event of licensee misconduct  
23 26 similar in nature to the actions available with respect to  
23 27 licensees under Code chapter 533A pursuant to the bill,  
23 28 including the civil penalty of up to \$5,000.

23 29 Concerning Code chapter 535, relating to regulation of  
23 30 matters pertaining to money and interest, the bill expands a  
23 31 definition of "lender", to which requirements relating to  
23 32 costs and fees on residential real estate loan costs and  
23 33 disclosures regarding discount points apply, to include loan  
23 34 originators, brokers, and persons providing any goods or  
23 35 services as an incident to or condition required for the

24 1 making or closing of a loan.  
24 2 The bill additionally modifies Code chapter 535B, dealing  
24 3 with mortgage bankers and brokers. The bill deletes a  
24 4 reference to an "affiliate" of a bank, bank holding company,  
24 5 savings bank, savings and loan association, or credit union  
24 6 and an insurance producer, as qualifying for an exemption from  
24 7 applicability of much of the chapter and modifies the  
24 8 exemption for real estate brokers, changes licensing and  
24 9 individual registration expiration periods and renewal  
24 10 deadlines to December 31 and December 1, respectively, and  
24 11 provides for additional fees in the form of application and  
24 12 renewal fees for branch locations, sponsor fees, and change of  
24 13 sponsor fees. Further, the bill authorizes establishment of  
24 14 education and testing requirements as a prerequisite to  
24 15 registration, authorizes payment of restitution by licensees  
24 16 as part of a disciplinary case, clarifies that acting as a  
24 17 mortgage banker or broker as an employee or contractor of a  
24 18 licensee without obtaining individual registration is a class  
24 19 "D" felony, and increases the size of the bond mortgage banker  
24 20 and mortgage broker licensees must pay from \$50,000 to  
24 21 \$100,000. The bill also mandates auditing of licensees or  
24 22 registrants under the Code chapter at least once every two  
24 23 years, and expands the entities to which information relating  
24 24 to licensee and registrant supervision may be furnished to  
24 25 include professional licensing authorities in this state,  
24 26 other states, and law enforcement agencies.

24 27 Regarding Code chapter 536, relating to regulated loans,  
24 28 the bill increases the size of the bond paid by licensees from  
24 29 \$1,000 to \$25,000, and extends, similar to other provisions of  
24 30 the bill, an expanded array of disciplinary actions and  
24 31 uniform processes available in the event of specified licensee  
24 32 misconduct. The bill changes the date licensees under the  
24 33 Code chapter must submit their annual reports from March 15 to  
24 34 April 15, provides that a licensee may not broker loans  
24 35 without a mortgage broker license, and deletes several  
25 1 exemptions previously applicable to nonresident licensees who  
25 2 are not physically located in this state nor engaged in  
25 3 face-to-face solicitation.

25 4 The bill additionally contains changes applicable to Code  
25 5 chapter 536A, concerning industrial loans. The bill changes  
25 6 the date for annual report submission from March 15 to April  
25 7 15, and again imposes an expanded array of disciplinary  
25 8 actions and uniform processes applicable to licensee  
25 9 misconduct, including the civil penalty provision of up to  
25 10 \$5,000. The bill provides that a licensee under the Code  
25 11 chapter may not broker loans without a mortgage broker  
25 12 license, and provides that licensees must post a bond in the  
25 13 amount of \$25,000, or in the alternative pledge a form of  
25 14 collateral providing a comparable degree of protection.

25 15 LSB 5291HV 82

25 16 rn/nh/5